

# The Open Court

A MONTHLY MAGAZINE

Devoted to the Science of Religion, the Religion of Science, and the  
Extension of the Religious Parliament Idea

*Editor:* DR. PAUL CARUS.  
*Assistant Editor:* T. J. McCORMACK.

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MARY CARUS.

VOL. XV. (NO. 3)

MARCH, 1901.

NO. 538

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CHICAGO

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## HUGO GROTIUS.

Dutch Jurist, Scholar, and Statesman.

(1583-1645.)

Painting by Abraham van de Temple in the museum Van der Hoop, at Amsterdam. After a copy by C. C. Burleigh made in 1882 for the Honorable Andrew D. White and now in the library of the Cornell University Law-School.

*Frontispiece to The Open Court.*

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## THE PROVINCE OF GOVERNMENT.

BY THE HON. C. C. BONNEY.

### I. INTRODUCTORY.

THE true province, office, and scope of civil government is a great and interesting theme. It touches all the relations that society deems sacred, and all the interests for which the warfare of life is waged.

In their government the people become united and powerful. In their government the many become united into one august and potent body, exercising authority, administering the laws, controlling the conduct of public affairs, preserving internal peace, defending the country against foreign foes, and performing such works as the general welfare demands.

In their government the people unite for the promotion of the common good, for the attainment of what they mutually desire, and for the preservation of what they hold in reverence. In their government the people find the largest prosperity of all in the highest well-being of each, and realise the philosophy of the great orator of the early Christian Church,—that all are members of one body, and if one member suffer, all the others suffer with it, and if one member be honored, all the others rejoice in its success. Poverty, sickness, misfortune, and crime; prosperity, health, success, virtue, and peace,—are all matters of common concern in the social state, and hence not to be ignored in the administration of the government.

But what are the limits of this all-protecting power? What are its relations to the individual, to the family, to the church, to the business calling, and to the people in communities or at large?

Before proceeding to consider these inquiries, the field of investigation must be narrowed and defined. A discussion of the province of government in general would be too diffusive to lead, within the limits of the present purpose, to any definite, practical conclusion. The conditions and relations of government are not the same in monarchical and in republican systems. Hence, to avoid confusion, we must confine our inquiries to the system under which we live, and which has for us a practical as well as a philosophical interest. What, then, is the true province of our own government, or governments?—for we seem to be living under several. Are they indeed separate, or are they only departments of one harmonious system of control? Municipal government, state government, and national government, confront us. What are their relations to each other, and to the people, and what is the true scope and duty of each?

The liberty of the individual and the authority of the Government are the two great counterbalancing forces of the American system. As the centrifugal force of the planets forever tends to draw them away from the sun, to roam unrestrained in their own paths through space, so the freedom of the individual continually impels him to resist the restraints of Government and the obligations of duty, and to seek in lawless ways the advancement of selfish interests and the attainment of personal ends. As the centripetal force of the solar system, if unchecked, would draw the planetary worlds into the consuming embrace of the sun, so the Government, if wholly unrestrained, would usurp all individual rights, and exercise a despotic authority over person and property, over "life, liberty, and the pursuit of happiness." And as the perfect balance of those opposing forces in the solar system secures its stability and perpetuity, so the just restraint of personal liberty by Government, and of Government by individual rights, results in the proper equilibrium and harmony of the opposing powers, and secures all the blessings of what is known as free government.

The relation of municipalities to the States, and of the States to the nation, has sometimes been described by declaring them, in poetic phrase,

"Distinct like the billows, yet one like the sea ;"

but I think a truer and nobler analogy may be found in moon, and planet, and sun, following forever their appointed paths among the stars.

Doubtless the same illustration has occurred to others. The heavens, says the sacred anthem, declare the glory of God, and the



firmament showeth his handiwork ; and so also do they indicate, in the movements of the heavenly bodies, the order and harmony that should be found in a wise system of civil government.

## II. THE NATIONAL GOVERNMENT.

The unity of God is the fundamental doctrine of religion, and the unity of the government is equally indispensable to a successful and enduring control of human affairs. A government divided against itself cannot endure. The people are the acknowledged source of all civil authority. They have created all departments of government, municipal, state, and national.

The people are one ; their governments also are one. Until it is seen that the governments of municipalities, states, and the country are harmonious parts of one system, and not independent and rival systems, their relations to each other and the public cannot be understood. They are all created by the same power, the power of the people. They differ in the uses they are intended to perform. Municipal and state governments are limited to the localities in which they are established, and they exist as well by the permission and the protection of the people of the whole country as by the active consent and effort of the inhabitants of the locality.

The National Government stands for all the people of all the States, and in theory exercises the will of all in their collective interests. It has the supreme authority of judgment and of execution. It is the final judge of the extent of its own powers, and the entire military force of the people is placed at its disposal for the enforcement of its decisions. If it oppress the people of any State or section, their sole remedy is through an appeal to the justice of the people of the whole country, who have the power, by the machinery of popular elections, to change the agents by whom the government is administered, and thereby to give redress to the oppressed.

The rights of States, and of municipalities, and of persons, depend, not merely on any reserved power of forcible resistance, but mainly on the public conscience of the whole country. The people of a State cannot even maintain a local prosperity, except in harmony with the views and interests of the people of the whole country. Sectionalism is the deadly Upas tree of the republican system, whose effluvium poisons the air of popular liberty, and converts the fair and fruitful garden of the common good into a dismal desert of selfishness and hostility. The rights and interests of the people

of every other State should be as dear to an American citizen as those of his own immediate locality. True citizenship is national. No State has the power to protect its inhabitants beyond its own borders, and every citizen of the United States ought to feel that wherever he may go in any lawful pursuit, the resistless power of his country will maintain his rights, and punish every aggressor. If any foreign power fail to protect an American citizen, the National Government interferes, and compels redress. And if any State fail to protect a citizen of another State in all his rights and lawful interests, it is the duty, and should be the pleasure, of the people of the whole country, through their common Government, to come to his relief. The idea that the parts of the country are independent of the whole is utterly pernicious, and should be rooted out of the public mind. The right of free local self-government in cities, counties, and States is of inestimable value, but this right depends for its perpetuity, as has been already said, not so much on physical force, as upon the desire of the people of the whole country to maintain such self-government, and upon their love of justice and fidelity to the law. A city, a State, or a section arrayed in hostility to the general welfare is a hateful sight; but never since human government began did the shining heavens look down on a more gracious scene than the grand family of the United States dwelling together in unity.

The idea of State citizenship was paramount in the confederation of 1778, in which each State retained "its sovereignty, freedom, and independence, and every power, jurisdiction, and right which was not expressly delegated to the United States in congress assembled."<sup>1</sup> And the same idea largely prevailed under the constitution of 1787, although that instrument expressly declares that "the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish the constitution."<sup>2</sup> But the question of national citizenship was finally settled, and the right fully and firmly established by the Fourteenth Amendment, the adoption of which was proclaimed July 28, 1868. It declared, among other things, that "all persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside," and that "no State shall make or

<sup>1</sup>*Articles of Confederation and Perpetual Union*, Article 1.

<sup>2</sup>*Con. U. S. Preamble*.

enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws." It also declared that "the Congress shall have power to enforce, by appropriate legislation," all the provisions of the amendment. The provision for national citizenship is in perfect accord with the spirit and purpose of the constitution as originally adopted ; and rather establishes on a firm foundation the original import of the national charter than adds a new doctrine to its provisions.

By the side of this grand citizenship of the whole country, the citizenship of State or municipality appears, and is small and unimportant. The world knows little and cares less about the geographical or political divisions of the country, but it knows and respects the Government and the people of the United States. The true province of the National Government is to maintain this national citizenship, with all its accompanying rights and interests.

To accomplish the objects and purposes for which the constitution was ordained, the General Government has power, among other things, to raise revenues for the common defence and general welfare ; to regulate commerce ; to make war ; to raise and support armies and navies ; and to make all necessary and proper laws to carry into effect the powers vested in the Government of the United States, or in any department or office thereof. It is also made the duty of the General Government to guarantee to every State in the Union a republican form of government, and to protect the States against invasion, and on the proper application, against domestic violence. "To guarantee" is defined to be to make sure, to warrant, to secure the performance of a duty. The word "form," as used in this connexion, is defined as the equivalent of constitution, organisation, system. It means substance, as well as arrangement. The national power and duty to guarantee to every State a republican form of government are of tremendous import, for the nation must necessarily judge what is republican within the meaning of the constitution, and have authority to carry its decision into effect ; and notwithstanding the judicial dogma that words should be construed in the sense they were understood to bear when employed, the living spirit of the constitution develops new meanings as the generations advance, and new emergencies of government arise. In constitutions, as well as in sacred Scripture, "the letter killeth, but the spirit giveth life."

The States are restrained in many particulars. Among them, they are deprived of the power to form alliances; to coin money to levy duties on commerce; to emit bills of credit; to deny full faith and credit to the public acts, records, and proceedings of each other; to deny to the citizens of any other State the privileges and immunities enjoyed by its own; and the constitution of the United States, and the laws and treaties made in pursuance thereof, are declared to be the supreme law of the land, and the judges in every State are declared bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding; and all legislative, executive, and judicial officers, both of the United States and of the several States, must be bound by oath or affirmation to support the constitution of the General Government. And yet, *mirabile dictu!* there are people who seem to question whether the Republic is a nation. The ghost of the ancient Confederacy, like the disturbed spirit of Hamlet's sire, revisits from time to time the glimpses of the moon. Here and there some political Belzoni exhibits the Confederate relic of the former century, recalling the song-celebrated mummy, who, we are told, walked about

"When the Memnomium was in all its glory."

But neither wandering ghost nor embalmed bones have any longer the power to inspire a popular movement. The War of Secession was an attempt to restore the dead Confederacy to life, and to establish it in at least the southern part of the Union, in the place of that living power which now rules the Republic, and has demonstrated its supremacy alike over domestic discord and foreign foe.

The true province of this living power is to maintain the national authority in all matters which affect the people of the whole country; to perform all such works and make all such regulations as the general welfare of all the people requires; and to protect the people of the several States in all the rights, privileges, and interests which are reserved or guaranteed to them by or under the constitution of the Union.

In many particulars the nation has failed to perform its duty toward the people of the several States. For example, it has failed to provide adequate remedies for violations of the obligations imposed on the several States; it has failed to provide an adequate and efficient public service; frequently it has wasted the public revenues in appropriations for schemes of no public importance, while works of the highest national interest—like a ship-canal con-

necting the Great Lakes with the rivers which pour their waters into the Gulf of Mexico—have been neglected. It seems to realise that soldiers and sailors need a special training for the proper discharge of their duties, and yet to suppose that the holders of high civil office can become statesmen by inspiration. In many other respects the General Government has failed to fulfil the grand purposes for which it was created. It should now advance. Every department demands reform. In every quarter a higher and better service is required.

### III. STATE GOVERNMENT.

While contemplating national power and glory, the States and their governments seem of comparatively small importance; but when viewed in their proper relations to the General Government, to the people, and to each other, they become invested with a wonderful dignity and interest. We turn from the lofty mountains, grand and glorious, to find a sweeter delight in the fields and gardens of the fertile plain. In the fruitful fields of the well-ordered State flourish all the virtues of civilised life. Every star in the radiant heavens looks down on a human home. The valleys ring with the shouts of school-children. The hills echo the music of church bells. The winds waft the perfumes of the fields into villages and cities, and carry back to the quiet farms the eloquent voices of workshop and mill. Agriculture, manufactures, and commerce, industry, learning, and religion, literature, science, and art, these are the powers that build the cultured State, and organise its inhabitants into an enlightened society for mutual assistance, protection, and advancement.

What is the province of government in relation to such a society? In general it is the right and the duty of the State government to protect the inhabitants in all their rights of person, property, and association, and to cause such public improvements to be made as the common good requires. The sacred things of society are person, family, religion, and property. To invade any one of these, in the humblest inhabitant, is to assail the State. Hence, the State prohibits and punishes such invasions as crimes against the peace and dignity of the whole people, and in their name tries the offender, and inflicts the penalty. It is manifest that government cannot endure without a fixed standard of right and wrong. To hold that justice or injustice are mere matters of public opinion, subject to change with the variations of popular caprice, would be to enthrone moral chaos, and to put "the abomination of deso-

lation in the most holy place" of civil government. So obvious has it been that those who make, interpret, and execute the laws should be guided by some acknowledged rules of moral right and wrong, existing independently of themselves, that the recognition of religion as indispensable to the well-being of the people, and as the guide of the State in matters of a moral nature, has been well-nigh universal. The frenzy of the Reign of Terror sought to dethrone religion, and set up human reason in its place; but the effort failed in the most ghastly catastrophe which modern history records.

The attempts recently made to "secularise the government," as the movement is termed, arise from a total misconception of the nature of the case, and of the relations of a separate Church and State. The free State protects the free Church; and the free Church preserves the free State. Neither can exist without the aid of the other. It is therefore as much the province of the Government to protect the religion of the people as it is to protect their homes and schools and possessions. It is not within the scope of this essay to show in detail how the free State and the free Church uphold and support each other. Whoever is interested in the subject may satisfy himself, if he will, by a reference to the early history of the country, and to the acts and words of the illustrious statesmen, jurists, and patriots who took a chief part in establishing the American system of free government, that the principles of the Christian religion were regarded as furnishing an unchanging and unchangeable standard of right and wrong for the guidance of lawmaker, judge, and executive.

The objects and purposes of State government, under the American system, are set forth in a somewhat specific way in the bill of rights common to the State constitutions. That for Illinois may serve as an example of them all. It declares that freedom and independence are natural attributes; that life, liberty, and the pursuit of happiness are inalienable rights; and that to secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed. It forbids that any person be deprived of life, liberty, or property, without due process of law; that is to say, without fair notice, an open trial, and a reasonable opportunity of defence.

It guarantees forever the free exercise and enjoyment of religious profession and worship; it forbids that any person be denied any civil or political right, privilege, or capacity on account of his



religious opinions; but provides that the liberty of conscience thus secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. The religion thus upheld and protected is the spirit of the religion of Christianity, but no person can be required to attend or support any ministry or place of worship against his consent, nor can any preference be given by law to any religious denomination or mode of worship. This provision relates to the religions established in this country, and would extend to other foreign systems of faith solely on the conditions that they are subversive of morality and foster the spirit of truthfulness and brotherly love. Even pagans are protected from all persecution on account of their views on the subject of religion. Thus the protection of the Church is harmonised with the guarantee of personal liberty. The individual must not assail religion; and those who administer the affairs of the Church must promulgate its teachings by persuasion, and not by force.

The bill of rights then secures freedom of speech and liberty of the press, with personal responsibility for the abuse of that liberty, and a provision that in all trials for libel, both civil and criminal, the truth, when published with good motives, and for justifiable ends, shall be a sufficient defence. Trial by jury is perpetuated; protection of persons, houses, papers, and effects against unreasonable searches and seizures is declared; and any arrest of person, or seizure of property, without probable cause set forth on oath and in writing, is forbidden. Protection against unjust criminal accusations, unfair trials, and unreasonable penalties, is given in ample and emphatic terms, which reminds us of the barbaric cruelties which other people have suffered for the want of such restrictions. Imprisonment for debt is prohibited. If private property be taken or damaged for public use, just compensation must be made. Acts innocent when done, cannot be made offences by subsequent legislation. Lawful contracts cannot be impaired by laws passed afterward. The military must be strictly subordinate to the civil power. Elections should be free and equal.

The people have a right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances. These guarantees of free government conclude with the declarations that every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property, or reputation: that he ought to obtain, by law, right and justice

freely and without being obliged to purchase them, completely and without denial, promptly and without delay; and that a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty. Other provisions of the constitution command the enactment of liberal homestead and exemption laws, that the home and the family may be protected against the calamities of business misfortune; and the establishment of a thorough and efficient system of free schools, whereby all the children of the State may receive a good common-school education, thus recognising and declaring that the intelligence of the people is the safeguard of the republic. Such is the true province, and such are the limitations of State government under the American system. And surely it will be admitted that if the high ideals of the bill of rights could be realised in actual government, the dream of a free people, unrestrained except by self-imposed laws, yet strong as an empire in their unity for common ends, would be fulfilled,—a dream that lights up the dark expanse of the ages, like the soft glory of the galaxy, when we hear

"The trailing garments of the Night  
Sweep through her marble halls,  
And see her sable skirts, all fringed with light  
From the celestial walls!"

Such a government would be indeed a government of the people, by the people, and for the people; a government of equal rights and privileges, of liberty, industry, intelligence, religion, and charity. For whatever the catalogue of the fundamental principles of free government omits to express, that may be deemed essential to a well-ordered state, is so plainly implied that there need be no difficulty in its application in the practical administration of public affairs. In the preparation of laws, the legislator finds a solution of most of the difficulties that beset him, in a careful consideration of conflicting claims and interests, and a decision in favor of what the general welfare seems to require. The State is not a school of speculative philosophy. It gives great latitude to inventive genius of all kinds, but it deals with interests of such infinite value and such solemn import that it must act decisively and from fixed principles, and must exact obedience from all, irrespective of the private opinions of dissenters. They may dissent at pleasure, and express their dissent in any orderly way, and persuade the governing authority to change its course if they can; but until a change is wrought, it is the province of the Government to require a uniform submission to its authority.



As liberty and equality are the inalienable rights of all, and the Government exists for the sake of those and kindred rights, it follows that, as regards individual conduct, the best government is that which governs least; that is to say, which gives the best protection to person, property, and society, and in the highest degree promotes individual freedom, enterprise, and success. But such a government must, at the same time, if it would discharge its full duty, promptly perform all those public works that devolve upon it, including such improvements as the common good or general welfare demands, and the burden of which ought not to fall on individuals. It is not the province of the Government to build houses, shops, or churches: but it is the province and the duty of the Government to protect them and their occupants against all assaults; and it is also the province and duty of the Government to make highways, to bridge streams, to construct harbors, and the like, that the people may come and go, and trade and worship, with prosperity and in peace.

#### IV. THE MUNICIPALITY.

But if such be the province of State government, what is left for the municipality to perform? The municipality is the agent of the State in the service of the people. Its office is to assist in the execution of the laws enacted for the government of all the people, and to provide such additional safeguards and facilities as the local conditions may require.

In the county, township, village, and city, the relations of the people become more complicated and intimate, and demand a corresponding degree of governmental care. In these relations the forces of social life develop their most powerful activities; the competitions of business demand extraordinary efforts; and the strife for place and power excites the most determined exertions. Hence, special regulations are required, greater facilities called for, and a more thorough and efficient supervision rendered necessary. The police power of the State is exercised, and the public revenues collected and applied mainly through municipal instrumentalities. It is mainly by virtue of what is called the police power of the State that the people are protected in the actual enjoyment of their constitutional rights.

"It is," says a high authority, "a settled principle, growing out of the nature of well-ordered society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious

to the equal rights of others to the enjoyment of their property, nor injurious to the community. All property is held subject to those general regulations which are necessary to the common good and general welfare."<sup>1</sup> It is pre-eminently the province of the State government to make such regulations. It is settled by abundant authority that they may extend to the public health and safety; the restriction or prohibition of offensive or dangerous occupations; the suppression of disorderly proceedings; and the promotion of intelligence, virtue, and good morals. Laws for such purposes are upheld as a valid exercise of the police power. The actual enforcement of such laws is devolved on municipal agencies. The essential nature of municipal government is administrative. Its office is not to make the laws, but to take the active part in carrying them into effect. In obedience to the mandate of the State, its hand levies and collects the taxes, erects public buildings, constructs roads, builds bridges, arrests offenders, executes the processes of the courts, dispenses public charities, abates nuisances, and protects person and property from assault and injury. It is the office of municipal government to carry the guarantees of the bill of rights into actual effect and make them living verities to the people.

Municipal government is the hand by which the State executes its will. This hand, which does the bidding of the people as made known by the voice of the State, should be the hand of a master builder in the construction of public improvements; the hand of the soldier in defending the community and maintaining public order; the hand of fidelity in administering the public revenues; the hand of justice in executing the law; the hand of a woman in the sacred work of charity; and the hand of an angel in the protection of the people, especially the young and defenceless, against organised vice and crime. This is what should be; but too often we behold, in place of that divine symbol of intelligent power, the palsied and leprous fingers of corrupt greed, working in favor of the dangerous classes of society, and treating their interests as paramount to those of the classes to whose industry and virtue all the progress of the community is due. But the palsy and the leprosy of the hand of civil authority may be healed, if the people will. The miracle only waits their call, and will descend and display its restorative power whenever the earnest prayer of the popular heart ascends to its willing ear.

Municipal government touches the divine institution of the

<sup>1</sup> *S. S. & C. L.*, 438.

family on every side. The power of the nation and the authority of the State seem afar, but the municipality is ever by our sides and at our doors. It surrounds the home; and this fact is the guide to the nature of its office. It is so to protect the home and its inmates that they may all enjoy "life, liberty, and the pursuit of happiness," and that each may attain, in any lawful calling, the highest position for which he is qualified. What all the people need in substantially equal proportions, they may secure in either of two ways. They may cause it to be provided by a common agent, at the common expense, or they may allow private enterprise to supply the need, and be repaid by a tribute to be collected. The erection of a school-house from funds raised by taxation, is an example of the first class; and horse-railway service by a private corporation is a specimen of the second. Public charities rest on two grounds,—the protection of the community from the evils and crimes which pauperism always brings in its train; and the manifest duty of every society to afford a sufficient protection to every law-abiding member. Protection equalises the conditions of society. The strong need less than the weak; the rich need less than the poor. Public compulsions also rest on a double ground,—the protection of the people against violence and fraud; and their right to compel those to be industrious, though against their will, who, being able to take care of themselves, would nevertheless become a burden to the community.

The protection of education and religion has likewise a two-fold support. The people regard the first as of inestimable value, and the second as sacred, and both as indispensable to a well-ordered community; and in addition to those considerations, the school-house and the church are the citadels, without which intelligence and virtue could not wage victorious warfare against ignorance and vice.

The treatment of so vast a subject in so brief a space must necessarily be fragmentary and suggestive. The magnificent landscape may be outlined in an hour; but its infinite details would require weeks or months for their portrayal.

So let us pause, and recur to our view of government as one grand personification of the power, the intelligence, and the virtue of the people. Its purpose is, not to make the individual dependent on needless aid, but to render him more and more self-reliant and independent. The excellence of the whole depends upon the excellence of its parts: make the individual citizen great and free, and the nation will be strong and glorious. The restraints of a

just government are not felt by him who desires to act justly, for the mandate of the law is in harmony with his will. He who regards the person, family, home, property, business, and church of his neighbor, as sacred from every assault, will have no terror of the law that provides penalties for injuries to them. To him the face of civil government is majestic and benign, and its voice welcome and encouraging, for it is his protector and his friend. It protects the country against foreign invaders and domestic violence. It administers the laws, settles controversies, and executes judgment. It opens harbors for storm-driven ships, highways for the toiling people, and asylums for the friendless, aged, and infirm. It builds institutions of learning for the ignorant, who are willing to learn; prisons for the control of those who will not govern themselves. It protects even the dumb beasts from wanton cruelty. It substitutes a reign of law for a dominion of force. Or if it fail fully to accomplish all or any of these grand results, it is ever in the effort to attain them.

The patriotic subject of such a government beholds it, not as the unanswering sphinx of Egyptian plain, not as the enslaving tyrant of war-worn empire, but as the vicegerent of God, descending like Moses from the holy mountain, with the tablets of the law in his hand, and the divine glory illumining his face.